

701. Legal English with Louise Kulbicki - Transcript



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[00:01:09] Okay. So now that I've said that we can get started. And here's the jingle

[00:01:18] You're listening to Luke's English Podcast. For more information, visit teacherluke.co.uk.

[00:01:30] Hello, and welcome back to the podcast. I hope you're doing all right today as you listen to this. Today's episode is all about legal English and it's a conversation with a legal English and law trainer called Louise Kulbicki from the UK.

[00:01:45] Legal English. Yes. And let me stop you right there if you think that this might be boring or just not for you, for whatever reason, just stop there for a second.

[00:01:56] You could learn some seriously useful bits of English and general knowledge [00:02:00] from listening to this, and I assure you that this will be more interesting than you expect. That's my Luke's English Podcast promise. This will be more interesting than you expect with more than just law, but the human stories and cases that formed some of the most important legal concepts in England and Wales.

[00:02:20] Law underpins so much of what we do that it's everywhere all the time, defining the parameters of the world in which we live. Also, the world of law uses language very specifically. It's very valuable stuff for you to learn, I think.

[00:02:37] During the conversation that you're going to hear, we managed to cover a lot of the main concepts in law, the sorts of things that you would study if you took a legal English course, and both Louise and I have taught legal English courses in the past, in fact, Louise does that more regularly these days than I do.

[00:02:56] But we've both taught, we both have experience of teaching legal English [00:03:00] courses. So a lot of the things that we say here come from things that we do in classes when we teach our courses. This could almost be like the introductory part of a course in legal English that you might take online or something.

[00:03:14] But it's, it's not, of course it's a free episode of my podcast. But I would certainly say that a lot of the things, a lot of the vocab, a lot of the concepts that come

up in this conversation are definitely things, you could make it list of them and you would find all of those items listed in a word list for, you know, any half decent legal English course.

[00:03:33] So, yes, it's a bit like the introductory part of a legal English course.

[00:03:38] A little bit of information about Louise, who you're going to be hearing me in conversation with. So Louise studied law at university and got both bachelor's and master's degrees in law, specialising in environmental law, in fact. After campaigning for environmental law reform in London and abroad, she moved to Brazil and [00:04:00] ultimately decided to go into legal English language teaching and set up what I think is the only legal English podcast available at the moment. Louise's podcast is called study legal English. I think it's, it's actually called The Study Legal English Podcast with Louise Kulbicki, and it covers all sorts of different areas relating to the English that you would need to operate in the world of law.

[00:04:25] I've always been fascinated by how English combines with the world of law and lawmaking and so I thought it would be interesting to talk to Louise about legal English, what it is, how we use it and what some of the most important terms, topics and cases are.

[00:04:40] I've always wanted to explore legal English to some extent on this podcast. It's just taken me 700 episodes to finally get to it. Personally, I learned to teach legal English at the London school of English, and I developed many important teaching skills on those courses, as well as tons of general knowledge [00:05:00] about the world. It was probably the English course that I learnt the most from as a teacher.

[00:05:06] Law is not just about rules. It's about stories of people who have problems, finding solutions to those problems and analyzing the situation as fairly as possible. It's about managing relationships between people and creating a framework that works for everyone.

[00:05:23] But stories are the thing. And you'll get a few stories in this episode, including what happens when you find a dead snail in your bottle of ginger beer, the key difference between a biscuit and a cake and how Mickey and Minnie mouse are the getting a divorce after all these years, plus important legal concepts relating to those things, including here's a little list, okay. Here's the contents page. Anyone who's done a legal English course will recognize a lot of these things.

[00:05:54] So here are the main points: Differences between solicitors and barristers, these are two types of [00:06:00] lawyer in England and Wales, solicitors and barristers. What are the differences?

[00:06:05] We talk about words that mean something different between general English and legal English.

[00:06:11] Jurisdictions - these are different systems, different legal systems in different places and differences in language between those jurisdictions.

[00:06:20] We talk about learning legal concepts as you learn the language and how the two kind of go together.

[00:06:27] Elements to a contract - so if you're doing business with someone, you need some kind of contract, what are the different elements that make that contract legal or valid, including the idea of consideration? which we will explain in due course.

[00:06:42] Also, we talk about civil law systems versus common law systems, some entertaining old cases, there's the one about the snail, which deals with things like tort law, negligence and the duty of care principle. There's a short history

[00:06:57] of the English language since 1066 [00:07:00] and how this affects modern legal English.

[00:07:02] The concept of doublets. This is when two words which mean the same thing are used together. And this is quite common in legal English. Like for example, the phrase null and void. I don't know if you're familiar with that phrase, null and void, but that's just an example of two words that mean the same thing, but for some reason in legal English, they're both used together. There's a few more examples of that.

[00:07:24] And also there's the case of, the Jaffa cakes, Jaffa cakes. Yum, yum, yum. Those delicious cakes that you might get in the shop, certainly in England, or in the UK Jaffa cakes oh yes please. But are they in fact cakes or not?

[00:07:38] Are they biscuits or are they cakes? They sort of look like biscuits. We eat them like biscuits, but are, maybe they're cakes. And so are Jaffa cakes, cakes, or biscuits and why is this important?

[00:07:49] Get your pen and paper out for this one. This there's a ton of stuff to learn.

[00:07:53] We recorded this conversation in the weeks leading up to Christmas of last year, 2020. Louise was working [00:08:00] in Oman providing legal English training courses to people there. And so this is where we join our conversation with me in Paris and Louise in Oman.

[00:08:08] How many legal concepts, words, and phrases can you notice and learn from this conversation? We will see.

[00:08:14] Also there is a subtitles video for this episode on YouTube.

[00:08:18] I've been making these subtitle videos or text videos in which you can read a transcript in nice, clear, big font on the screen as you listen. So go to my YouTube channel and you'll find this full episode with nicely presented subtitles in a nice big font on the screen. That's a new thing I've been doing recently.

[00:08:39] The plan is to do that with all my episodes and also some of the episodes from the archive. That's a new thing. So you can read the full transcript as you listen, if you want to. That's on my YouTube channel and if you check it out, don't forget to smash that like button, okay guys. Don't forget to like and subscribe, which obviously everyone implores you to do [00:09:00] if they ever go, if you ever go onto YouTube, but please do it as well on my account. It helps the algorithm. AI Gorithm seems to like it. Mr. Gorithm Oi AI! Algorithm algorithm. Yeah. Was that a joke? Sort of. Anyway. Never mind. Let's just keep going. So anyway, like and subscribe. Okay guys. Don't just tap the like button. I want you to smash that like button, because that's the YouTube way, isn't it?

[00:09:25] So there should also be a full transcript for this episode available on the episode page on my website, which is also free. It's quite generous of me, isn't it?

[00:09:35] Anyway, without any further ado, let's get started and let's meet my guest Louise Kulbicki from The Study Legal English Podcast.

[00:09:42] And here we go.

[00:09:49] Louise. Hello.

[00:09:51] **Louise Kulbicki:** [00:09:51] Hi Luke thank you for inviting me on your show.

[00:09:54] **Luke Thompson:** [00:09:54] You're welcome. Thanks for coming on. How are you today?

[00:09:57] **Louise Kulbicki:** [00:09:57] Yes. I'm, I'm good. I'm feeling a little bit [00:10:00] sleepy because I've had a difficult working week, but yes, very good and excited to be here.

[00:10:06] **Luke Thompson:** [00:10:06] What time is it where you are?

[00:10:08] **Louise Kulbicki:** [00:10:08] It's two o'clock. I'm I'm in Oman in Muscat and yeah, sunny outside.

[00:10:17] And, very, very different to, I imagine where you are in, in Paris. Mid morning.

[00:10:25] **Luke Thompson:** [00:10:25] Yeah, it's about 11:00 AM. The sky is gray and overcast. It's quite chilly. I always feel I have to do a weather report for some reason at the beginning of these conversations.

[00:10:36] **Louise Kulbicki:** [00:10:36] Typical British.

[00:10:37] **Luke Thompson:** [00:10:37] Yeah.

[00:10:39] **Louise Kulbicki:** [00:10:39] Smalltalk.

[00:10:40] **Luke Thompson:** [00:10:40] Yes. So how would you describe yourself now? Are you a legal English trainer? Is that the sort of your main job description today?

[00:10:48] **Louise Kulbicki:** [00:10:48] Yeah. Yeah, I guess I, yeah, I'd say. Yeah, that's about right, like a legal, a legal English and law trainer, I would say.

[00:10:57] **Luke Thompson:** [00:10:57] So , I wonder if it's worth just [00:11:00] briefly mentioning the two main career paths for someone training to be a lawyer in in England and Wales, which would be to either become a solicitor or to become a barrister. You chose not to do those things. Can we maybe just talk about what, what the differences very briefly and why didn't you want to do either of those things?

[00:11:19] Yeah, sure. So a solicitor is a type of lawyer who does traditionally does more transactional work like contract drafting and work that involves clients outside of court, like setting up a company for a client or something like that. Whereas a barrister traditionally is a type of lawyer that presents in court and the kind of lawyer that if you ever watch legal dramas and you kind of see the figure with the wig and the gown, like "wig" is fake hair for listeners who don't know what it is. And a robe is kind of like an outfit that [00:12:00] Harry Potter would wear. Those are the barristers and yeah, they have, so they have different training. So the lawyer, sorry, the solicitor would do a law degree and then a short course called the legal practice course.

[00:12:13] And then go on to do training within a law firm and the barrister does a law degree and then does a short course, and then they do something called a pupillage, which is where they kind of train in what we call chambers, which is these where barristers work basically. So traditionally there's been more of a distinction between the two, but nowadays a lot of solicitors also do present in court. They do litigation,

but they don't automatically have what we call rights of audience in certain courts. They have to take an exam to do it. Yeah. Why didn't I do it basically. I, I dunno, just so when I was [00:13:00] studying, I wanted to use the law in some way, but I just wasn't, I didn't see when I did it work experience in law firms.

[00:13:08] I did them in very corporate environments. And I guess at that time, I just felt like that wasn't quite where I fitted in. You know, if listeners watch legal dramas like Suits or things like that, it was kind of like that environment and I just felt like, Oh, this is just a bit too corporate for me.

[00:13:27] It could be very, very competitive. It can be very tough being a solicitor or, or, yeah, I mean, solicitor is I think the one that most people go for I think there are more solicitors than barristers, so they're very corporate environments either. You're going to be working in a company in the legal department in that kind of corporate world in London, maybe, or you're going to work in a law firm, working for partners.

[00:13:50] It's really tough and very demanding and. Yeah, it might, it's not everyone's cup of tea. Yeah.

[00:13:57] **Louise Kulbicki:** [00:13:57] I guess that's what I felt and I'm [00:14:00] like now, now that I'm so, cause I, I run the Study legal English Podcast and so I, I speak to like a lot of, a lot of lawyers and I can see that, you know, that is the kind of perception that we have, but there are some firms that are doing really interesting stuff that kind of more, you know, re regular people and You know, it's, it's not just, I guess, being a solicitor is not just always that particular corporate thing, but I guess being a naive young person, I had an idea of what it was and it just, it just didn't fit.

[00:14:34] Now. I'm like, Why didn't I do that? I could have been rich!

[00:14:38] **Luke Thompson:** [00:14:38] You mean you're not rich being a legal English teacher?

[00:14:45] **Louise Kulbicki:** [00:14:45] I mean, like I'm just working really long hours. And some of the top lawyers, they get obscene amounts of money, I'm just like, wow. Yeah. Could have retired by now.

[00:14:57] **Luke Thompson:** [00:14:57] Let's talk about legal English then let's, let's [00:15:00] focus on that now. So, well, this may be an obvious question, but it's probably an important one. What is legal English and how, how is it actually different to the English that we're just using now?

[00:15:11] **Louise Kulbicki:** [00:15:11] Good question. So yeah, so legal English is the language that lawyers or legal professionals use when they are doing their work.

[00:15:22] So it could be when they're drafting contracts, like we've mentioned, or when they are presenting in court or speaking with clients and legal English, yeah. It's, it's, it's like a niche area of English because it's got its own vocabulary. It's got its own collocations. It's got its own sentence structures or, you know, specific times when we can use different sentence structures, like the active and passive voice.

[00:15:51] And I guess, like you've mentioned, it's kind of difficult to separate legal English from the [00:16:00] law obviously, because what you're doing is very often vocabulary embodies these legal concepts that have been developed through the legal system and so if you're learning legal English, then you're also inevitably learning about the law and the legal system.

[00:16:20] And so it's also difficult because all legal systems are different. And you know, even in, even within the United Kingdom, we've got three jurisdictions, which for listeners who are unsure, what a jurisdiction is, a jurisdiction is an, an area or like a country or an area of land that has its own legal system.

[00:16:42] So in England, in the UK, sorry, we've got the jurisdiction of England and Wales, Scotland, and Northern Ireland. So yeah. If you're thinking of going and studying the law in the UK and you go and choose to go and study in Edinburgh, then you're actually going to be studying Scottish law not, not English law. So [00:17:00] you know, all of the differences when you're studying, if you study regular English and you learn words in British English, and then you try to speak to an American, they'll be like, what are you, what are you, what do you mean by that? It's the same with, with legal English, you know, we've got, we've got words that exist in English, legal English from England that don't exist in American English

[00:17:28] **Luke Thompson:** [00:17:28] Shall we consider some examples there?

[00:17:31] **Louise Kulbicki:** [00:17:31] Yeah, yeah, sure. So in terms of American and English legal English in England we say the claimant and in America they say the plaintiff, which means... Do you know this Luke ?

[00:17:45] **Luke Thompson:** [00:17:45] I remember, I remember, are you going to test me now? See if I can remember correctly. In a legal case, let's say listeners Oh, we need a little example. Let's say that I, as the copyright [00:18:00] holder of the intellectual property that let's say I'm the owner of the intellectual property rights to what would it be?

[00:18:07] Luke's English podcast. Okay. Inc. It's a company and I discover that someone else is basically copied my idea. They've stolen my essence. And I feel like the, you know, that I have a legal claim to make, I would take that person to court. So as the person taking the other one to court, I'm making a claim, the claim would be they've stolen my ideas.

[00:18:30] Then I would be the claimant. I'd be the one bringing the, the case to the court.

[00:18:36] **Louise Kulbicki:** [00:18:36] Very good. You've got full marks. You clearly know your stuff Luke. Yeah. So yeah, so that's an example, but, we used to, in England, we used to use the word plaintiff, but as I've previously mentioned this idea of the plain English approach in England in 1999, there was some changes to what we [00:19:00] call the civil procedure rules, which are the rules that govern which kind of, you know they control how a court case, a civil court case is conducted and, the language, there was this big shift towards using more natural language. So instead of plaintiff we now use claimant because it's the person who brings the claim.

[00:19:21] It's the person who has the complaint. So it kind of sounds more, more natural. It's more understandable. So in England we use claimant in the US they use plaintiff. Another one, if you watch a lot of legal dramas, you might hear the word, motion, like yeah. I can't do an American accent, but you know, somebody like they're bringing a motion to the court. In England we use application, which sounds much more natural.

[00:19:51] And basically a motion or an application is an oral or a written request that's made to the courts or the judge just asking [00:20:00] them to give a ruling or to give an order on a particular topic. So it's basically asking the judge to do something.

[00:20:09] And then another one is that we there's a word called "subpoena", which sounds like, what on earth is that ? Never going to guess what that is!

[00:20:20] **Luke Thompson:** [00:20:20] So common to hear that though, in, in, in films and TV shows like "Mickey mouse was subpoenaed in front of the Supreme court on Friday."

[00:20:28] **Louise Kulbicki:** [00:20:28] Yeah. Yeah.

[00:20:31] **Luke Thompson:** [00:20:31] That kind of thing. Subpoena.

[00:20:32] **Louise Kulbicki:** [00:20:32] Yeah. Mickey mouse.

[00:20:33] **Luke Thompson:** [00:20:33] Yeah, it's just the first thing I thought of, I don't know, maybe Minnie Mouse and Mickey Mouse are going to get a divorce and the divorce is getting very messy and there's all sorts of other private cases being brought in front of courts and then Supreme courts and appeal courts and it's Mickey and Minnie are just absolutely dragging each other through the dirt here. It's it's terrible. Johnny Depp, Johnny Depp. It's like a Johnny Depp, Amber Heard situation. Anyway...

[00:20:58] **Louise Kulbicki:** [00:20:58] So yeah, so a [00:21:00] subpoena. Yeah, you're right. We hear it a lot in legal dramas in American legal dramas, and in England we call it witness summons which maybe sounds a bit more natural, but you'll probably, you know, if you haven't heard those words before, you might still be like, What does that mean?

[00:21:17] And, Luke have you got any...?

[00:21:20] **Luke Thompson:** [00:21:20] Oh, okay. Yeah. Okay. I reckon I can have a go at this. So listeners, you know what a witness is that someone who has, you know, got evidence to give in a case in court for example, you know, Donald duck could be the, could be the witness You know, if there are claims that Mickey mouse has been, I don't know, abusive in the, in the marriage then maybe Donald duck might be brought in as a witness.

[00:21:42] So he would be summoned to the court. So to summon someone is basically to request that they come somewhere. So it's like, you've been summoned to appear in court. It's basically saying, come here. That's what a summons is. It says, come here, come to the court, please.

[00:22:00] [00:21:59] **Louise Kulbicki:** [00:21:59] Very good. You, you clearly know your stuff.

[00:22:04] So yeah, so that's kind of a taster of the difference between American and legal English from England, and then we, I mean, I could talk a little bit about kind of some of the differences between regular English and legal English. Would you like me to talk a little bit about that?

[00:22:28] **Luke Thompson:** [00:22:28] Yes, please.

[00:22:29] **Louise Kulbicki:** [00:22:29] Yeah. Okay. So you asked at the beginning, "Is legal English fun?" And I was like, Hmm, not sure about that. I'm going to demonstrate a few fun words in regular English, general words, which are fun general words, which when we take them into the legal English, they become a little bit less fun shall we say ?

[00:22:54] So regular English, the word "bar". What do [00:23:00] you think Luke, when you think of a bar?

[00:23:03] **Luke Thompson:** [00:23:03] So a bar, meaning a place where you can buy a drink. Yeah, right. So let's see. So, okay. So in legal English, it's probably going to explicitly describe the purpose of the, of the establishment. So it's probably going to be something like a beverage procurement premises or something like that.

[00:23:25] **Louise Kulbicki:** [00:23:25] That's a good, so you've given me a, quite a different answer to the one that I was, I was looking for, but you're quite right. If, for example, you were writing a contract and you had to define what the bar is you wouldn't just say, Oh, it's a place to get a drink. You might get a lawyer that tries to use some obscure writing, like the beverage premises or whatever you said there.

[00:23:50] **Luke Thompson:** [00:23:50] Beverage procurement premises. Yeah. Which I think is not something that people actually would use.

[00:23:57] **Louise Kulbicki:** [00:23:57] I'm just going down to the beverage procurement [00:24:00] premises.

[00:24:03] **Luke Thompson:** [00:24:03] I've been summoned to the beverage procurement premises.

[00:24:06] **Louise Kulbicki:** [00:24:06] Could I get you some liquid that may quench your thirst? So we do have lawyers, you know, defining terms like that in, in contracts, but we also, the bar is a specific word in legal English, which in England refers to the legal profession of barristers.

[00:24:26] And that's in England, but in America it refers to, you know, you get the bar association, which is not this fun association where, which is full bars where you can go drinking. It's the association of lawyers basically, that's the first one.

[00:24:43] **Luke Thompson:** [00:24:43] I see you mean the, so we've got bar in general English, meaning a place to get a drink and bar in legal English means like when you, when you actually plead in court.

[00:24:53] Right? So for example, that's why it's a barrister because of the bar in barrister means it's someone who is at [00:25:00] the bar, meaning that they are sort of at a, it's almost like being at a counter, but not to get a drink, but because you're trying to talk to a judge.

[00:25:08] **Louise Kulbicki:** [00:25:08] Yeah. Actually, the origin of the word, I believe comes from the fact that in court, there's a bar that, that, that basically separates the legal professionals from the judge and the members of the public. So I think it probably has something to do with that. So this, this idea of the bar separating legal professionals from, from regular people, but yeah, it relates to the legal profession of barristers. And then we've got another very fun word in regular English, which is party.

[00:25:47] What's a party, Luke?

[00:25:49] **Luke Thompson:** [00:25:49] A party is a place where you would imbibe those liquids beverages that we purchased potentially at the bar, or maybe at another outlet of some kind. A party, yeah. It's [00:26:00] a place where you go and have fun with your friends and dance to music and, you know have a drink and stuff like that.

[00:26:05] It's a party, isn't it? Yeah.

[00:26:07] **Louise Kulbicki:** [00:26:07] Yeah. Something we're all missing. Like during twinsie we're all like, come on. Let's, let's get to the party. But, in legal English, it means something less fun. It generally refers to something else. Any ideas Luke?

[00:26:22] **Luke Thompson:** [00:26:22] So I guess a party in legal English would be a person or maybe a company, which is involved in a legal claim or a legal dispute in court.

[00:26:33] So if it's, if, if we go back to this, maybe we shouldn't, but I'm going to anyway because I can't think of any other examples at this point. The, the, the case of Mickey Mouse versus Minnie Mouse that those are the two parties involved. You've got Mickey Mouse on one side and Minnie Mouse on the other side. It's a very sad case, but two, those are the two parties in the case.

[00:26:55] **Louise Kulbicki:** [00:26:55] Exactly, exactly. So, so yeah, so those are some [00:27:00] examples of, you get regular English, of course, you know, a huge amount of words, and then there are a lot of words. But our regular English words that have a totally different meaning in legal English. So part of learning legal English is part of partly learning, learning those words and sometimes learning those words does mean also learning legal concepts. Another example would be consideration, which is in general English it's like, you know, a careful or kind thought where, you know, to be considerate, to be thoughtful, to have consideration for people. And

[00:27:40] **Luke Thompson:** [00:27:40] like when you buy someone a Christmas present, you have, you know, you need a lot of careful consideration to to get the right gift.

[00:27:47] So it's like careful thinking, being thoughtful. Yeah. As being considerate and con yeah. Consideration is the now, but...

[00:27:53] **Louise Kulbicki:** [00:27:53] But, yeah. But then in, and yeah, I'm trying to be considerate in my Christmas shopping at the [00:28:00] moment, but then in legal English consideration is this element to form a binding contract.

[00:28:08] It's like this concept that if you give something, for example, you said I'll sell you my car. And I say, okay. And then I give you some, you know, I would give you money in exchange for the car basically, so that it's not...

[00:28:24] **Luke Thompson:** [00:28:24] I should hope so!

[00:28:27] **Louise Kulbicki:** [00:28:27] What kind of car have you got?

[00:28:29] **Luke Thompson:** [00:28:29] I've got a mini, a mini Cooper.

[00:28:31] I should let you know that. It's, it's, it's a toy though. I don't, I should've probably stated that before. Anyway, anyway, I don't have a car, but if I did have a car, I would have a Mini Cooper, let's say.

[00:28:43] **Louise Kulbicki:** [00:28:43] Nice, nice. So within that idea of consideration, to understand the word you need to understand the law of contract because you're understanding what does that actually mean to form a binding contract? So it's kind of difficult to separate the law and concepts of the [00:29:00] law from, from the language.

[00:29:02] **Luke Thompson:** [00:29:02] By the way, sorry, we should just clarify what consideration is then in, in terms of contract law.

[00:29:08] So consideration would be the thing that is exchanged or some element of exchange, right? So in a, in a legal contract of the sale of a car, you're buying the mini Cooper and in exchange, I get some money. So if there's no, if there's no money written into the contract, there's no sense of exchange then there's no consideration in the contract.

[00:29:30] **Louise Kulbicki:** [00:29:30] Exactly. Yeah. Yeah. Good point to clarify. And I think the courts have said that even if it was just like one pound, it could still be deemed as, as valid consideration. It still could be thought of as valid consideration.

[00:29:46] **Luke Thompson:** [00:29:46] One thing is being exchanged for something else.

[00:29:48] It's not just a one way, a one way thing. Because a one way thing is it's not a contract, so it can't be, it can't be a legally binding. If it doesn't comply [00:30:00] with the rules of what a contract is, and one of those rules is there must be an element of consideration. If you want the contract to stand up in court, if you want to be able to make a claim against someone for not fulfilling the duties of the contract, then the contract has to be legal in the first place.

[00:30:18] So, and consideration is one of the key aspects of making your contract legal.

[00:30:23] **Louise Kulbicki:** [00:30:23] Exactly. What I would say is that it's kind of like a bit of an abstract thing, and that even though this concept exists in most jurisdictions that exists in most legal systems in some kind of form, but in reality, in commercial contracts, there's always going to be consideration because you know, businesses generally are going to want money for their goods and services.

[00:30:51] **Luke Thompson:** [00:30:51] Yeah. It's very, it's very rare I expect that there is a contract drawn up and then, you know, the lawyers are like, wait a minute there's no consideration in this contract. Of course there, there's almost always [00:31:00] consideration because that's business.

[00:31:01] **Louise Kulbicki:** [00:31:01] Exactly, exactly. I mean, these concepts are linked to, especially with legal English that they're linked to the development of our English legal system, which is quite peculiar in the fact that it's a common law system, which is a system whereby we have law, which is made by judges and that we follow and that we get the rules from, from this case law, as well as written statutes or acts of parliament, which are the, the written laws.

[00:31:33] Whereas in other jurisdictions, you know, a lot, a lot of jurisdictions are civil law jurisdictions where they have just all written down code, and so the ideas that we follow in England, they've kind of developed over years and years and years, and from literally the beginning of the common law, which was 1066. And, you know, so [00:32:00] they've, they've developed from these, you know, these times when maybe Bobby McBobface . . . I was trying to think, I was trying to think of like a medieval name.

[00:32:13] **Luke Thompson:** [00:32:13] Bobby the Elder.

[00:32:15] **Louise Kulbicki:** [00:32:15] That's better. That's better. So Bobby the Elder, you know, wanted to sell his land to... Hoppy...

[00:32:24] **Luke Thompson:** [00:32:24] Davey the Younger

[00:32:25] **Louise Kulbicki:** [00:32:25] Davey the Younger, and they made some kind of oral agreement about selling the land, but then I've forgotten what the name was, Johnny the Younger?

[00:32:37] **Luke Thompson:** [00:32:37] Okay. Why not?

[00:32:38] **Louise Kulbicki:** [00:32:38] Johnny the younger didn't provide any, any money or anything in return, and then they had to decide whether this was a valid contract or not, and so this idea of consideration and providing something in exchange for something developed.

[00:32:56] **Luke Thompson:** [00:32:56] Yeah. Yeah, yeah, yeah. Often these things it's just so like, [00:33:00] so absolute, basic common sense. Like yeah, of course. If I'm going to sell you a car, you know, I would expect to get something in return. It's absolute, basic common sense, but even the most basic common sense principles have to be explicitly written into, into law in some way. It's interesting what you said. I think it's just sort of worth mentioning that again about the English and Welsh legal system, which is based on yeah common law, a combination of cases, case law judgments by judges based on specific cases that become legal precedent and and laws that are written by parliament. So it's kind of a combination of those things. So I guess as a, as a, as a lawyer, as a solicitor, well, a solicitor might spend a lot of time looking through cases, and this is previous judgments made by judges based on two people who, who were in a disagreement and what the judge decided that then becomes like a binding legal principle going forwards. [00:34:00] So it's a combination of those cases and laws written by parliament written by the, the government.

[00:34:06] **Louise Kulbicki:** [00:34:06] Yes. Yeah. And so there are quite a few common law jurisdictions out there.

[00:34:11] And you know, it generally comes from the, the British empire, a lot of common law countries when the UK, when, when we went and tried to take over countries, I'm sorry everybody for, for our colonial past, but there's you know, so there are a lot of common law countries out there and, you know, America, India, New Zealand them, there's a lot of countries in the Caribbean that are common law systems that have this, this concept of case law, and that also, it makes, I mean, I said studying law is a little bit boring, but studying common law is probably a bit more interesting than just studying civil codes because you get to study the facts of cases and sometimes there can be [00:35:00] some, some interesting cases a bit like the one that you made up with Minnie and Mickey Mouse. I've never heard of that case, but there's cases that are kind of like fun and they involve real people or real companies.

[00:35:12] And so it kind of breathes a bit of life into the law, whereas in a civil country, you might just be reading codes, which could maybe be a little bit boring.

[00:35:24] **Luke Thompson:** [00:35:24] Yeah. Yeah. Big books full of legal codes. So just, can I just sort of recap just to help people, because I'm sure that listening to people, listening to this who aren't lawyers and have no experience of law or legal English, it may be a bit lost.

[00:35:38] So we were talking about first of all, differences in legal language between different jurisdictions. So for example, England and America, and the differences there, and also differences between just general English and the sorts of legal English that we use in England and Wales, and talking about how, when you start to learn the vocabulary, you also [00:36:00] start to learn about the legal concepts and

those legal concepts could be for example, concepts in contract law, like the idea of consideration, but also things like the English and Welsh legal system, which is based on, you know, previous cases and also statutes from the government.

[00:36:18] So that's interesting. And also one of the things that makes learning English, learning legal English more interesting is getting into examples and specific cases, and there are some cases that as you say are actually quite entertaining. I remember one of the cases that we used to do, Oh, is it Donahue versus someone?

[00:36:37] **Louise Kulbicki:** [00:36:37] Oh yeah. Donohue vs Stevenson.

[00:36:40] **Luke Thompson:** [00:36:40] Donohue vs Stevenson. Is that the one with the snail?

[00:36:43] **Louise Kulbicki:** [00:36:43] Yeah. Yeah. Do you want me to say the... Do you remember the facts?

[00:36:49] **Luke Thompson:** [00:36:49] I know the basics, but you can do it cause it's probably a bit fresher in your mind.

[00:36:53] **Louise Kulbicki:** [00:36:53] So basically, Donohue went to I'm trying to think of whether [00:37:00] Donohue was the actual woman or whether it was her friend.

[00:37:02] I think it was the actual woman.

[00:37:04] **Luke Thompson:** [00:37:04] I can find out maybe.

[00:37:06] **Louise Kulbicki:** [00:37:06] Yeah. So basically a lady went to a bar basically, or a cafe and she, her friend ordered her a ginger beer, and that I think they ordered like some kind of dessert, which was ice cream with ginger beer poured over it or something like that, and when she received her dessert, she had this kind of opaque bottle of ginger beer which means that you can't see through it. So it's just this glass bottle, like, you know, like a bottle of wine you'll get and you can't see what's in the bottom.

[00:37:44] **Luke Thompson:** [00:37:44] Wait a minute, an opaque... This is a key word. This is absolutely a key word in this case, opaque which is the opposite of transparent.

[00:37:52] Exactly. So if something is opaque, it means you can't see through it like a, like a mug, like a sort of mug that you would use to [00:38:00] drink your coffee from. Like a Luke's English podcast mug is, I've got one here. Can you hear that listeners? A Luke's English Podcast mug is opaque. You can't see through it.

[00:38:10] Whereas a wine glass is transparent. It's not opaque. So the key thing here is that the bottle of ginger beer that it's actually Donohue. It's Mrs. Donohue. She ordered the bottle of ginger beer and it was in an opaque bottle. So the people serving the ginger beer, weren't able to see what was inside.

[00:38:32] **Louise Kulbicki:** [00:38:32] And so is it, is it that Mrs. Donohue was the one who drank it or was it, that was it that was her friend.

[00:38:40] **Luke Thompson:** [00:38:40] Hold on a minute. Donohue's the one who drank the ginger beer.

[00:38:46] **Louise Kulbicki:** [00:38:46] So Donohue, she, she had this dessert with the ginger beer poured over it, and as she was pouring the rest of it over, you know, she'd already eaten some of it

[00:38:58] this [00:39:00] decomposed, foul, disgusting snail dropped off plonked itself onto her dessert, and you know, she was horrified and her friend was horrified, and you know, she also saw, so she suffered from gastro-enteritis, I think some kind of like problem, very severe problem with her stomach. Anyway, she tried to take a case to court and it was, she didn't have a contract with the, with the owner of the cafe because she hadn't bought the ginger beer herself. Her friend had bought the ginger beer for her. So the courts were kind of trying to be, trying to understand and she was trying to claim that she would be due compensation for her, for her injury, but because there wasn't a contract, they couldn't, she couldn't ... in [00:40:00] contract law. So instead they ... it's kind of like the foundation of tort law, which is an area of law, which is kind of where there's a duty of care between people, for example, like a shop owner and the people in the store to, to make sure that they are safe and cared for.

[00:40:23] And if they're negligent, what we call negligent, which is they fail to uphold that duty than the person who is harmed can get compensation through what we call tort law. So it was kind of like one of the most, I mean, it was a, you know, the poor lady with her snail, she managed to get compensation in the end, through this, by developing this concept of negligence in tort.

[00:40:50] So that's basically it. Is that what you remember, Luke?

[00:40:53] **Luke Thompson:** [00:40:53] Yeah, absolutely. Yeah, it was, it was a way to teach tort law and yeah, tort, [00:41:00] I always found it quite difficult to, to, to define it. It's a civil wrong, so it's something other than breach of contract. So in private cases, so, okay. Listeners, let's say we've got criminal law on one side and we, I think we understand criminal law.

[00:41:15] It's when crimes are being committed and, and so on. But then there are also like cases between individuals where it's not the crown prosecution service or the police let's say that are prosecuting, but instead it's individuals prosecuting each other in the private sphere. And on what basis can these individuals take each other to court or claim things against each other?

[00:41:38] I say individuals, it could be someone like Donohue, Mrs. Donohue, and the owner of the cafe. Okay. That kind of, those are the parties that, the kind of parties we're talking about here. So on what basis can they have legal disagreements with each other? It could be based on contract, as we've said.

[00:41:55] So, and the contracts are just, you know, when basically one person says, do you want this? And the other person goes, yes, [00:42:00] please. And then they actually pay for it. And the things are exchanged and, and the people are at the right age and that becomes a contract, but in this case, as you said, Louise Mrs. Donohue didn't buy the ginger beer herself. So there was no actual contract in place. So on what legal basis can a claim be made? And this is where we are in the zone of tort law, which is about. Yeah, some kind of mis ... what would be that misdoing some wrongdoing and yeah, so it's, there are basic principles in tort law.

[00:42:33] And one of them is, what, duty of care and negligence. So, yeah, so, so I guess I always try, I always gave the example in school, in, in, when I was teaching these things of the staircase in our school, and we had very, very steep staircase to go down into the classrooms where we used to teach these classes.

[00:42:55] And there was a, a handrail attached to the wall, right? [00:43:00] And that handrail wasn't always there. Very old building, it was kind of a new handrail. Anyway, the point is that the owners of the building have a duty of care over anyone who is actually using the building in a reasonable way, for example, going up and down the stairs to get from the classroom to the kitchens or the toilets or something.

[00:43:21] So yes, the, the owners of the building have a duty of care to make sure that it's reasonably safe. And that includes things like putting a handrail on the wall or maybe a little, you know, "watch out for the step", little sign or adding rubber to the steps so that people don't slip. That would all be done because of principles in tort law, which say that you've got to look after the people who are using your building.

[00:43:51] Right.

[00:43:52] **Louise Kulbicki:** [00:43:52] Yeah, yeah, yeah, exactly. Exactly. And that's like in England and America, there's this idea that we [00:44:00] have a sue culture. When, so if you ever go on holiday in England, you might, and you go into a supermarket and you see that there's a sign that says, you know, careful there is water on the ground.

[00:44:13] Don't slip. The reason for that sign is because of tort law because the supermarket does not want to be liable if you slip over in the supermarket, they want to show that they've taken the care to tell you that there's there's water on the floor and, you know, if you're so stupid that you can't see it and you're going to slip over you can't sue us because you know, in, in tort and it's because of it's because of this concept of negligence and the duty of care.

[00:44:43] And so yeah, that's kind of one reason why we have everywhere in England, you might see like, you know, signs saying, be careful. Watch your head.

[00:44:53] **Luke Thompson:** [00:44:53] Yeah. And I've, I've met students before. Who've, who've commented on that. Like going on the London [00:45:00] underground. Even lawyers on the law, law cause we used to go to visit the law courts.

[00:45:04] We used to go to the Inns of Court and stuff like that, you know, fascinating trips and we'd be on the train. And you know, I can remember people saying to me, why are there so many signs telling people what to do everywhere? And it's like, please do this. Please do that. Be careful of this. Remember to that.

[00:45:21] And remember to do that. Mind the gap. Yeah, constantly being told and they felt like it was very patronising, like just you're constantly being instructed and treated like a, like a child all the time. Like, do this be careful of that, but it's because of these legal principles, which basically, yeah, the, these, these companies or the underground network are basically saying.

[00:45:44] All right. We told you it's not our fault if you fall and kill yourself. Okay. We, we gave you fair warning. So you can't sue us for it.

[00:45:52] **Louise Kulbicki:** [00:45:52] Exactly, exactly. Exactly. Whereas in a lot of other countries, this concept would be [00:46:00] written and very well-defined in a civil code. In England it kind of developed through the courts. So it kind of developed in this slightly different way. It was it was clear that there was a gap in the law where, you know that owners of premises doctors conducting surgery people in positions of responsibility had to ensure that that premises or that actions were safe for those that they were providing services or products for.

[00:46:34] And so the courts kind of develop that concept, but, you know, it was quite a broad concept and then gradually it kind of gets refined in different cases, but yeah, it's all linked to how our, how the jurisdiction of England and Wales and the law and the common law has developed over the years. And I wanted to mention another point about [00:47:00] how the law has developed and how the language has developed as well.

[00:47:06] Because I think this could be interesting for listeners and also you being in France might, might be interesting for you as well. And so basically the, I kind of mentioned that the, the origins of the common law date back to 1066 which is... Every English person or every person from the UK knows what 1066 means.

[00:47:32] Luke, what do you think of when you hear 1066?

[00:47:36] **Luke Thompson:** [00:47:36] 1066 is of course when the Normans invaded England and William the Conqueror and his Norman army sailed across the English channel and attacked at Hastings on the South coast, Southwest coast. And there was a big battle and the Norman army, which is basically, I mean, French, although in those days it was probably not exactly French, [00:48:00] but Normandy is Northern part of France.

[00:48:03] So it's when the French or Normans invaded England, killed our King

[00:48:07] An arrow, he got an arrow in the eye. Ooh it must have hurt. And so from, from that point forward, we had a Norman monarch on the throne . William, the conqueror, and he was a very important figure and a lot of big reforms happened in our country at that point .

[00:48:26] Lots of castles were built, like, for example the tower of London, I think was built by William the conqueror, but I expect also it had a huge different, huge impact on our court system and all that stuff and also, is probably one of the reasons why there's a lot of French in English now, especially formal English.

[00:48:47] **Louise Kulbicki:** [00:48:47] Exactly. Exactly. So yeah, you've given a very good introduction to it. So 1066, William the Conqueror he took over England and what happened was prior to [00:49:00] this, we did not have a unified legal system. It was all local laws being applied quite sporadically, quite randomly, very, very local.

[00:49:11] And what William the Conqueror did was start to establish the common law, which is the law which is common to everyone. He had judges which went round the country trying to apply the same principles all the way around the country. And what happened was French, as you mentioned, you know, why do we have so many French words in English, French origin words, and especially in formal English?

[00:49:38] French was the language of the court, but of course English was the language of the people, and so what lawyers did was they had to use two words instead of one, because they had to use the French word for the court or for the official legal concepts, and they had to use English for the lay people, the regular people, the [00:50:00] people they were representing.

[00:50:01] So what's happened in legal English is that there are lots of what we call doublets, which is these two words, which means the same thing being used together where we could just use one word, and I'll give you an example of that. There's, there's a phrase that's called that's used, which is indemnify and hold harmless, which is like, Ooh, what does that mean?

[00:50:31] Sounds very complicated. To indemnify and hold harmless. It basically means to compensate someone for a loss. It's to compensate, to provide money for that problem that was suffered and it's used in specific instances. But basically indemnify comes from the French.

[00:50:53] It's got a French origin and hold harmless has an English origin, and nowadays [00:51:00] what a lot of people are trying to promote, people who are interested in using plain English principles is the idea that, you know, you shouldn't use two words where you can use one, you could just use indemnify instead of indemnify and hold harmless.

[00:51:16] Because basically those two words mean the same thing. So yeah, legal English is full of these legal doublets and it's it's funny because sometimes you get people trying to, and this is of course what lawyers are great at doing. They try to argue that these words have different meanings, but to justify the use of, of these kinds of long complex phrases, but actually there's a lot of writers out there and lawyers out there who also equally argue the, argue the opposite.

[00:51:50] **Luke Thompson:** [00:51:50] Yeah. The example of null and void springs to mind. So for example, if two parties have had a contract together, but for some reason they've decided to [00:52:00] stop doing business and so the contract needs to be canceled, let's say

[00:52:04] After all the legal work has been done and the contract is stopped, then in legal language, you might say that the contract is null and void, but those two words mean the same thing. So why use two words to mean the same thing? It seems unnecessary, and I guess "null" would be from French and "void" maybe that is more of an Anglo-Saxon word then, "void".

[00:52:30] **Louise Kulbicki:** [00:52:30] Yeah, it could be, I'm not sure because sometimes, sometimes it's the case that you get doublets which have origin in both French and English. So I, I'm not sure about null and void. "Null", yeah, definitely sounds French. I don't know about void.

[00:52:46] **Luke Thompson:** [00:52:46] "Void" sounds, it sounds quite Germanic to me.

[00:52:48] **Louise Kulbicki:** [00:52:48] Yeah, yeah. I think you're probably right. So learning the language of the law is like, you know, you have to learn and understand those expressions, but then also [00:53:00] understanding that the modern trend is towards using a more plain language approach, not just, it's not just a trend, it's, it's, it's a duty for English solicitors actually, to in the code of conduct, they are, which is the code that regulates solicitors professional behavior. They are obligated to communicate in a way that is understandable to clients.

[00:53:29] And and then of course, you know, we've got the civil procedure rules, which show that there's been a shift in court language in England from, you know, plaintiff to claimant to a more plain English equivalent. And so, you know, it's not just a trend, it's kind of like there's a, there's a push of shift towards using, to thinking more about the language that we're using in legal English, and trying to make it more understandable.

[00:53:57] But of course you need to understand, you've [00:54:00] got to understand these kind of legalese words. And it doesn't just mean using unnatural language. There are different principles that apply to it, but clearly there are certain words, vocabulary, collocations, for example, in legal English that we use that you need to learn as well.

[00:54:19] And for example, like we don't say... we say break the law, but we don't say break the contract. We say, breach the contract. And we don't say to break a right. We say to infringe or to violate a right. So, you know, legal English has its own kind of words and vocabulary. And it's knowing when to use them and, and how to use them correctly.

[00:54:47] **Luke Thompson:** [00:54:47] Yeah, because obviously the business of law or the practice of law is about making very specific distinctions in order to be absolutely explicit and absolutely clear in order to prevent [00:55:00] misunderstandings, which can lead to, you know, bitter conflicts and things like that. It's about clarifying things.

[00:55:07] So everyone knows exactly where they stand and exactly what's been agreed and all that sort of thing. So specifics are very important. I was just going to mention about the plain English movement, that it's also arguably a, sort of an ethical push as well on ethical grounds, because what can happen in law, I think is that lawyers become so specialist and they end up using specialist language, "legalese", as you said that it can become so specialist that ordinary laypeople can't understand it at all.

[00:55:41] And because of that advantage that legal people can have that, that allows them to exploit non-legal people and for example, charge even more money to explain things, and you know what I mean? Having access to such specific terminology can actually be sort [00:56:00] of a barrier for ordinary people, and this can lead to sort of lawyers, exploiting people and stuff like that. So it's about opening it out and trying to make it more accessible while also maintaining the basic functions that legal English needs to have.

[00:56:15] **Louise Kulbicki:** [00:56:15] Definitely, definitely. I always try to emphasize when I do my training, that you can be very professional using the language correctly. That doesn't mean that you have to overdo it. Intelligent professionals don't need to prove that they are that by using big words. So I think in certain situations, it could lead to kind of exploitation, and going back to the thing that you said, you mentioned about how part of being a lawyer is to express yourself in a clear way and to make sure that disagreements don't happen about [00:57:00] meanings of words and things like that.

[00:57:02] You brought to mind this case that I wanted to mention, a fun case and it involves very tasty Jaffa cakes.

[00:57:14] **Luke Thompson:** [00:57:14] Yum. Yum. Yum. Okay. What are Jaffa cakes? This needs to be explained first. This needs to be a defined term, doesn't it? In this case, what a Jaffa cake is, and maybe this is the whole basis of the case, actually trying to describe what a Jaffa cake is, but in plain English or in sort of layman's terms, what is a Jaffa cake?

[00:57:32] **Louise Kulbicki:** [00:57:32] Well, it's difficult. Difficult one to describe I'd probably describe it as, but this is the herein lies the problem. I'd probably describe it as a biscuit-y cake that's small like a biscuit, but soft like a cake. How do you describe them Luke?

[00:57:51] **Luke Thompson:** [00:57:51] So I would say listeners so a Jaffa cake

[00:57:54] You'd find them probably in the biscuit area of the supermarket where you'd find your, your other [00:58:00] biscuits, like your, your classic digestive biscuits or chocolate digestive biscuits, my personal favorite. So you'd find them there and they come in a box and they're, they're sort of round like, you know, typical

English biscuit size. I dunno how many centimeters in diameter that is, but then it doesn't matter really. And and it's, it's like, okay, so it's a, it's a sort of a sponge.

[00:58:22] The base is the base of it is like, spongecake like, spongecake, I'm not sure if it actually is spongecake, but it's like sponge cake. And then on top of that, there's a layer of like a sort of orangy sort of like marmalade stuff, like an orange, orange flavored fruit jelly let's say, and then on the top of that is a layer of chocolate.

[00:58:46] Okay. And it's when you bite into it, it's quite soft. It's chocolatey. It's orangy. You get a bit of sponginess you get the nice crunchy chocolate on the top and then the, the layer of orangy what did I say? Jelly in the, in the [00:59:00] middle there they're absolutely delicious. I could eat a whole box in one sitting without any, without any trouble at all.

[00:59:07] But, so what's the problem then here? What's why was, why was this the subject of a legal dispute?

[00:59:13] **Louise Kulbicki:** [00:59:13] So what, what happened? So in 1973, there was this introduction of VAT, which is value-added tax for specific items. So it's a kind of tax that companies can charge on their goods, which then is passed generally passed onto the consumer.

[00:59:32] And there's different rules that apply, but basically if you have to charge VAT on your products, then it's probably a bit of an administrative headache. Like you don't probably don't really want to be doing it. Anyway, so the tax law basically said, if you are a regular biscuit, or if you are a cake, or if you sell these things, you don't need to pay any VAT.

[01:00:00] [01:00:00] You don't need to charge any VAT. If however, you are what we call a luxury biscuit, which is a biscuit covered in chocolate then the standard rate of VAT applies, which it was 17.5% when this was introduced. So herein lies the dilemma of is a Jaffa cake, a biscuit or a cake? And the tax authorities they didn't charge any, Jaffa cakes were like free, they didn't have to charge any VAT from the introduction of it until 1991 and then suddenly the tax authorities in England turned around and were like, hmm, I'm not sure about this. We're missing a... You know, [we] kind of think that they should be included as a luxury biscuit.

[01:00:52] And so there was this court case where Jaffa cakes were arguing that they were not a luxury biscuit. They [01:01:00] shouldn't be subject to this VAT tax. They were indeed a cake, and then the tax authorities going no way, you're definitely a biscuit, and, like you said, so the, the arguments were basically like you raised some important arguments there Luke. The tax authorities argued that, you know, the Jaffa cake you find in the biscuit section, it's small, like a biscuit. It is what else? We eat it like a snack, okay. Like you said, you could probably a box in one go. You probably wouldn't eat a whole cake in one go, although...

[01:01:35] **Luke Thompson:** [01:01:35] We eat them in the same way that we eat biscuits.

[01:01:38] **Louise Kulbicki:** [01:01:38] We eat them in the same way that we eat biscuits.

[01:01:42] So that was kind of the tax authority's argument. They were like, come on, we want you to be subject to tax. And the Jaffa cakes were like, no way we are soft, like a cake, the ingredients we use, cake ingredients. [01:02:00] When we pour the ingredients into our mold, it's like we pour it. The ingredient mixture is like a cake mixture.

[01:02:07] It's not like a dough, like a hard pastry type ingredient, like a, like a, like a biscuit or like a cookie. They said that, you know, we're soft and spongy. And apparently they like baked a gigantic Jaffa cake to show to the court that, you know, if it was bigger, it would definitely be a cake. And basically...

[01:02:35] **Luke Thompson:** [01:02:35] That must have been a fantastic day in court. It sounds like one of those really dramatic court cases where one day someone brings in a prop or an object into the courtroom, and it's sort of like everyone's astonished and astounded. Look, here is this cake, this, this is a full-size Jaffa cake and look, it's definitely a cake, isn't it. And you know, they all passed it around and look, and they're all eating [01:03:00] it hmmm certainly spongy. Hmm. Okay.

[01:03:03] **Louise Kulbicki:** [01:03:03] Yeah. I would have definitely, if I had ever become a solicitor or a barrister, yes, I would have loved to have been in on that case. So anyway, in the end the judge said, what, what do you think, Luke? What do you think the final outcome was?

[01:03:19] **Luke Thompson:** [01:03:19] This is a really, really... It's a tough one. I'm just thinking like, so from the point of view of the tax authorities, they're thinking, well, Jaffa cakes, they sell really well. They're one of the country's top selling products. If only we could get a little bit of that, that cash for ourselves, you know, for the, for the country's tax revenues. So they're looking to get in on some of the Jaffa cake action by imposing VAT on it.

[01:03:42] They could just not do anything, but they've decided no, I think that we can get some money here and Jaffa cake, understandably a thinking hands-off it's called a Jaffa cake for goodness sake. It's obviously a cake we don't need to pay tax. What did the judge decide? I think after eating a number of Jaffa cakes, the judge probably What did the judge rule?

[01:04:00] [01:04:00] I think I know actually, Louise, can I say?

[01:04:03] **Louise Kulbicki:** [01:04:03] You can say!

[01:04:05] **Luke Thompson:** [01:04:05] So isn't it, this? In the end, the distinction between whether it was a cake or a biscuit, whether it was a cake, which wasn't subject to taxation or a a biscuit, it's a luxury biscuit because it's got chocolate on top, which would be subject to VAT.

[01:04:21] This was decided by what happens when the cake or the biscuit kind of gets old. So when you leave a biscuit on a plate without eating it, or leave a cake on a plate plate without eating it for like three days and you come back to it what condition is it in? Because cakes and biscuits will do different things when they get old.

[01:04:41] So a biscuit will go soft. I don't know if you've ever listeners you've ever had a cookie or a biscuit on the side, you go away for the weekend. You come back. Oh my biscuit. And you pick it up and it sort of bends and breaks in your hand because it's gone all soft. That's what biscuits do. Whereas cakes, what happens to cakes?

[01:04:56] They kind of go hard don't they? So did [01:05:00] they test a Jaffa cake and leave it for three days and then come back to it and decide if it went soft or hard, and on that basis decided whether it was a cake or a biscuit. Is that what happened?

[01:05:11] **Louise Kulbicki:** [01:05:11] I'm very impressed at your knowledge of this. That's what happened.

[01:05:17] And what's your, what do you think happened with the, so, you know, if you leave a Jaffa cake, do you think it's going to go hard, like a cake or soft, like a biscuit?

[01:05:27] **Luke Thompson:** [01:05:27] I'm trying to think. You see, because I've never left a Jaffa cake in my life. I've always eaten them within about a half an hour of opening the package.

[01:05:34] **Louise Kulbicki:** [01:05:34] I see you're out of control with the jaffa cakes.

[01:05:37] **Luke Thompson:** [01:05:37] Totally, biscuits and Jaffa cakes. They're just it's terrible. I can't not eat them all. So I think that a Jaffa cake would go hard.

[01:05:45] **Louise Kulbicki:** [01:05:45] You are correct. So basically that's what happened. They decided that, yeah, it's a cake. It's definitely a cake and they got, you know, they didn't have to be [01:06:00] subject to the VAT tax.

[01:06:02] And why did I bother telling that story? I told it because this is exactly what lawyers do. Okay. They, they try to prevent these things from happening. So of course, if a biscuit had been defined in the tax law or a cake had been defined in the tax law or it had been perhaps more clearly written, then maybe this particular dispute could have been avoided. So the kind of making sure that you write and express yourself clearly, and also of course, present and speak in a, in a clear way is crucial to a lawyer. So yeah, but I think that was my point.

[01:06:47] **Luke Thompson:** [01:06:47] Yes, and it's also just a good story and it, it, it kind of shows us that stories are absolutely vital for communicating things and teaching things, and even something as [01:07:00] potentially dry as as legal English, and dry biscuits and cakes and stuff, even something dry that, you know, boring, like yeah, law can be brought to life through stories, and there are always stories to be found in legal English, for example, these cases of like a woman accidentally eating parts of a dead snail and and then a new law being created on the basis of it, or the story of is a Jaffa cake, a cake or a biscuit?

[01:07:27] Actually, we didn't deal with the ruling that came out of the Stevenson Donohue case. We didn't actually decide what happened in the end. I I'm looking at the Wikipedia page for the case at this moment. So maybe I can just read out read this out. So the outline of the case as described on Wikipedia is, is that this case also known as the Paisley snail or snail in the bottle case involves Mrs. May Donahue drinking a bottle of ginger beer in a cafe in Paisley Renfrewshire in [01:08:00] Scotland, unknown to her or anybody else, a decomposed snail was in the bottle. So nobody knew that the snail was in the bottle. She fell ill. She sued the ginger beer manufacturer, Mr. Stevenson. So it was actually the manufacturer, not the, cafe, that was the other party.

[01:08:16] The house of Lords. So this, this case went quite high in terms of the, you know, the different courts that it can go to. But the house of Lords held, held, meaning they decided or said that the manufacturer owed a duty of care to Mrs. Donohue. Which was breached because it was reasonably foreseeable that failure to ensure the product safety would lead to harm to consumers.

[01:08:44] There was also a sufficiently proximate relationship between consumers and product manufacturers. So, I, yeah, so basically I think it was decided that the that letting a snail fall into the bottle and maybe, I don't know why the transparency or opaqueness of the bottle was [01:09:00] important. I think that's, I know why the opaqueness of the bottle, the fact that you couldn't see through the glass of the bottle

meant that the, the, the cafe owner was not liable at all because the cafe owner had no idea and was not responsible for it.

[01:09:13] Because if, if the bottle had been clear, then maybe the cafe owner could reasonably have been expected to see parts of a dead snail before serving it to a customer. But he couldn't do that because of the opaqueness of the bottle. So the cafe owner was, was, you know, basically taken out of the matter.

[01:09:29] And ultimately, yes, so the courts decided that the manufacturer of the ginger beer had a reasonable duty of care over its customers and failing to ensure that snails don't fall into the bottles failing to ensure that meant that they were liable. And this just became a landmark case in tort law.

[01:09:51] **Louise Kulbicki:** [01:09:51] Yeah, which is super important because of course, if you buy a product off Amazon, for example, Amazon, you might have a contract between Amazon, [01:10:00] but you haven't got a contract between the manufacturer of the product and so if you buy a product that I don't know, you buy some headphones that then end up electric using yourself, Which I hope that doesn't happen.

[01:10:11] You would be able to make a claim and talk with the, with the manufacturer. I mean, probably these days they've got some kind of warranty or things like that, that guarantee the there's also, there's all kinds of extra laws that have come in place to kind of protect consumers which have developed.

[01:10:28] But if there's none of that, then you can claim in tort for this this idea that they've breached the duty of care. And some other point just to mention on the Donohue and Stevenson cases that it originated in Scotland. So bearing in mind that Scotland's a different jurisdiction to England and Wales, but because it was such an important case, it went up, it went right up to the House of Lords, which was now, nowadays we have the Supreme court of the United Kingdom, but at that time in [01:11:00] the early 20th century, it was the, it was the most senior court in the United Kingdom and it decided cases for all of the jurisdictions in the UK. So that kind of, like you said, it set a precedent which then needed to be followed everywhere in the United Kingdom.

[01:11:21] **Luke Thompson:** [01:11:21] Yes. Oh, it's all very interesting. I'm fascinated by this. We could go on discussing these things for a lot longer, but I think that there is a limit to how much we can do this. So let's see. But if you know, what, if people want to hear more of this kind of conversation and this kind of teaching they can listen to your podcast.

[01:11:44] So can you tell my listeners about your podcast and any other, any other services that you offer for those people who are interested?

[01:11:52] **Louise Kulbicki:** [01:11:52] Sure, sure. So, so I host a podcast called the study legal English podcast, and you can find it if you go to [01:12:00] studylegalenglish.com and as well, if you, you know, any kind of application that you listen to your podcasts on just search for the Study Legal English Podcast. And yeah, the aim of it is to talk about legal English, to interview people who are from various backgrounds in the law and to help lawyers and law students around the world improve that legal English, but also if you're kind of involved in business or you've got some kind of interest in the English legal system, then you can check it out.

[01:12:32] And so basically, you know, the podcast is free, obviously, it's a podcast and then I've got some membership features, which are for people who would like to have access to extra resources and I've got a bonus code for you for you listeners.

[01:12:52] If you're interested in trying it out, then I've got a code which is [01:13:00] LUKELAW, all one word and all upper case, which would get you 15% discount of my membership, which is podcast pro and podcast light, the two membership options where you get various extra things to the podcast. So, yeah. LUKELAW, all one word, upper case, and you can get 15% discount. And I also have a free download of an introduction to legal English.

[01:13:29] If you're interested in some of the stuff that we talked about today, if you're maybe if you're a teacher and you're interested in teaching a bit of legal English, or you're just curious to go back and hear some of those examples that we talked about today, then I've got a download. So if you go to studylegalenglish.com/lukelaw you can have a, you can find that that document to download.

[01:13:54] So yeah, I recommend having a little peruse of [01:14:00] legal English. If it's interesting for you knowing a little bit about it, you can, you know, impress your friends with a bit of legal English maybe at a party, you can, you can say, I know the real meaning of party.

[01:14:15] **Luke Thompson:** [01:14:15] You can you can entertain your friends by telling them the story of Stevenson versus Donohue, or maybe any the next time you have a Jaffa cake, you can bore everyone around you by explaining in huge levels of detail the difference between a biscuit and a cake.

[01:14:32] **Louise Kulbicki:** [01:14:32] Yeah, exactly.

[01:14:35] **Luke Thompson:** [01:14:35] Okay. That's wonderful. Thanks Louise. So studylegalenglish.com yeah? Okay. LUKELAW and listeners that's Luke spelled L U K E not L U C K, not L O O K. Okay. L U K E please. LUKELAW, you get 15% off. That's not bad. Nice. One. Well, Louise, [01:15:00] it's been, it's been really interesting talking to you. It's been great to actually revisit a lot of the legal English that I used to teach much more regularly than I do now. And yeah. Good luck over there in Oman with your punishing teaching schedule. Nice, nice one.

[01:15:16] **Louise Kulbicki:** [01:15:16] Thank you. Thank you, Luke. It's been very nice to chat to you and yeah. Thank you very much.

[01:15:28] **Luke Thompson:** [01:15:28] Thanks again to Louise. Don't forget to check out her podcast. If you want to hear more. The Study Legal English Podcast with Louise Kulbicki. Also head over to Louise's website, that's studylegalenglish.com for all the info that you need and if you want 15% of Louise's paid content, you can use the code.

[01:15:50] LUKELAW at checkout L U K E L A W that's LUKELAW, L U K E L A W for a 15% discount from the [01:16:00] podcast pro and podcast light packages available on studylegalenglish.com. Okay, well, that was a big punch of legal English right into your face, wasn't it?

[01:16:12] Just to recap, we talked about barristers and solicitors.

[01:16:15] We talked about differences between general English and legal English and words that mean different things across those two types of English. We talked about jurisdictions and differences in language specifically between England and the United States for the most part

[01:16:31] We talked about learning legal concepts as you learn the language, which hopefully is something that you've done in this episode, too. Elements to a contract to make it valid, including the idea of consideration. We talked about how law is made

civil law systems versus common law systems. And then some of those entertaining old cases like Donohue vs Stevenson, the snail . The case of the Jaffa cakes

[01:16:54] tort law, negligence, the duty of care

[01:16:57] a bit of a history lesson [01:17:00] and those pairs of words, that basically mean the same thing, some weird things about legal English.

[01:17:06] Okay. So I hope you found that useful. As ever I welcome you to leave your comments on the website teacherluke.co.uk find the page for this episode and leave your comment there. That's the best place to do it. Also download my app, the Luke's English Podcast App to get the entire episode archive on your phone with loads of bonus content, too, including various full length episodes that you may have never heard before.

[01:17:31] And also other things like over a hundred mini phrasal verb episodes and more. That's the Luke's English podcast app on your phone. It's completely free. Why don't you go and get it right now? Also subscribe to Luke's English Podcast Premium to gain access to all of those episodes, all of those premium episodes that, you know, you, you probably haven't ever heard. There's over a hundred of them and PDFs and stuff too specifically, designed to help you broaden your [01:18:00] vocabulary and grammar and improve your pronunciation

[01:18:02] teacherluke.co.uk/premiuminfo

[01:18:05] That's it for this episode, though. You can expect more free and premium content to arrive over the next few weeks, including those subtitle or text videos that will be appearing on my YouTube channel. I have plenty of ideas and I'm looking forward to another year of Luke's English podcast. And I sincerely hope you join me for the English and also for the enjoyment. Speak to you again next time but for now it's time to say goodbye bye bye bye bye bye.

[01:18:32] Thanks for listening to Luke's English podcast, for more information, visit teacherluke.co.uk